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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 DAVID DOUGLAS MOELLER,

9 Petitioner,

10 v.

11 MARGARET GILBERT,

12 Respondent.

CASE NO. 3:13-cv-05337-RJB

ORDER ADOPTING REPORT AND
RECOMMENDATION

13 This matter comes before the Court on the Report and Recommendation of the Magistrate
14 Judge. Dkt. 18. The court has considered the relevant documents and the remainder of the file
15 herein.

16 On August 27, 2013, Magistrate Judge J. Richard Creatura issued a Report and
17 Recommendation (Dkt. 18), recommending that Petitioner's habeas corpus petition (Dkt. 7) be
18 denied and that a certificate of appealability also be denied. Petitioner has not filed any
19 objections.

20 The court has reviewed the record *de novo*. The court concurs with the Magistrate
21 Judge's thorough and careful analysis of Petitioner's claims. Five of the six grounds for relief
22 are procedurally barred. The remaining ground is without merit because petitioner had the
23 ability to cross-examine the witness and his right to confrontation was not violated. The state
24 court's adjudication did not: (1) result in a decision that was contrary to, or involved an

1 unreasonable application of, clearly established federal law as determined by the Supreme Court;
2 or (2) result in a decision that was based on an unreasonable determination of the facts in light of
3 the evidence presented to the state courts. 28 U.S.C. §2254(d). Accordingly, the Report and
4 Recommendation (Dkt. 18) should be adopted and Petitioners' habeas corpus petition should be
5 denied.

6 Moreover, a certificate of appealability should be denied.

7 || Therefore, it is hereby

8 **ORDERED** that the court **ADOPTS** the Report and Recommendation (Dkt. 18);
9 Petitioner's habeas corpus petition (Dkt. 7) is **DENIED**; and a certificate of appealability is
10 **DENIED**.

11 The Clerk is directed to send uncertified copies of this Order to all counsel of record, to
12 any party appearing *pro se* at said party's last known address, and to the Hon. J. Richard
13 Creatura.

DATED this 25th day of September, 2013.

Robert J. Bryan

ROBERT J. BRYAN
United States District Judge